No. 59

# In the Supreme Court of the United States

OCTOBER TERM, 1959

FRANK COSTELLO, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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FRANK COSTELLO, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Appeals (Pet. 2a-13a) is not yet reported. The opinion of the District Court (R. 17-43)[1] is reported at 171 F. Supp. 10.

### JURISDICTION

The judgment of the Court of Appeals was entered on February 17, 1960 (Pet. 1a). The petition for a writ of certiorari was filed on March 18, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1] The reference "R" is to petitioner's appendix in the court of appeals, which constitutes the record before this Court.

## QUESTIONS PRESENTED

1. Whether the evidence is sufficient to establish that petitioner wilfully and falsely misrepresented a material fact during his naturalization proceedings.

2. Whether the government should have been barred from instituting this denaturalization proceeding by the lapse of time since naturalization.

3. Whether some of petitioner's admissions as to his true occupation at the time of naturalization were tainted by wiretapping.

## STATUTE INVOLVED

8 U.S.C. 1451(a) (Section 340(a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, as amended, 68 Stat. 1232) provides, in part, as follows:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: * * *.

## STATEMENT

On May 1, 1958, the United States filed a denaturalization complaint (together with affidavits of good cause) against petitioner in the United States District Court for the Southern District of New York (R. 3-14). Following trial without a jury, the District Court vacated the court order admitting petitioner to citizenship and cancelled the certificate of naturalization issued pursuant thereto (R. 17-44). On appeal, the Court of Appeals affirmed.[2]

1. The government's complaint alleged that the order admitting petitioner to citizenship in May 1925 and the certificate of naturalization had been "procured by the concealment of material facts and by wilful misrepresentation." Specifically, the complaint alleged that petitioner had sworn on three separate occasions (in his preliminary form for petition for

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[2] The government had filed an earlier denaturalization complaint against petitioner on October 22, 1952, under 8 U.S.C. (1946 ed.) 738(a), the predecessor to the statute upon which this proceeding is founded. The District Court granted petitioner's motion to dismiss the earlier complaint and to strike the affidavit of good cause, without prejudice to a renewal of the proceedings, on the ground that both the government's affidavit of good cause (which was filed somewhat after the complaint was filed) and its evidence were seriously tainted by wiretapping. *United States* v. *Costello*, 145 F. Supp. 892 (S.D. N.Y.). On appeal, the Court of Appeals reversed, holding that the government should have been given an opportunity to establish that its evidence was untainted or otherwise admissible. *United States* v. *Costello*, 247 F. 2d 384 (C.A. 2). This Court granted the petition for a writ of certiorari and reversed, *per curiam*, on a ground not considered below—that the filing of the affidavit of good cause contemporaneously with the denaturalization complaint was a prerequisite to the institution of the suit. *Costello* v. *United States*, 356 U.S. 256 (No. 494, O.T. 1957); see *Matles* v. *United States*, 356 U.S. 256.

naturalization, during his oral testimony before a naturalization examiner, and in his petition for naturalization) that his occupation was "real estate," whereas his actual occupation was the illicit purchase and sale of alcohol (R. 4-5); and that petitioner, in his petition for naturalization, had sworn that he would support and defend the Constitution and laws of the United States, whereas he was at that very time violating the laws of the United States by engaging in the illicit purchase and sale of alcohol (R. 5).

The evidence showed that during the period 1921-1923 petitioner worked for Emanuel Kessler who, until he received a 2-year sentence for violation of the National Prohibition Act, was engaged in the illegal importation of alcoholic beverages from Europe (R. 59-61). Kessler's boats would land about 500 cases of illicit liquor, each night, somewhere on Long Island, New York (R. 60-61). Petitioner and his brother, Edward Costello, were employed by Kessler to meet the boats and truck the liquor to hiding places for storage —either in a garage behind Edward Costello's home, or in an old mansion which petitioner and his brother had purchased (R. 62-65, see 71, 74, 76). Kessler would contact petitioner or Edward daily at their office, 405 Lexington Avenue, New York City, to arrange a meeting place for each night's activity (R. 52-56, 62-63, 76). The Costellos received about $6,000 each week from Kessler for their hauling and storage service (R. 65, 76-77). When Kessler left for jail in 1923, petitioner asked him "for some money so he could continue on." Kessler gave petitioner "either 100 or 200 cases" of liquor for that purpose (R. 68, 73).

During the period prior to December 1923, petitioner and his brother also stored liquor for Albert Feldman and bought and sold illegal liquor on their own account (R. 168-174). Occasionally petitioner would accept small lots of merchandise from Kessler in partial payment of the storage charges (R. 66). He disposed of 500 cases of liquor supposedly being stored for Kessler (R. 66-67, 175-176), and he somehow reacquired from the government about $250,000 worth of Kessler's whiskey seized in a raid on petitioner's mansion-warehou.. (R. 67-68).

In the fall of 1925, petitioner and Mr. Harry Sausser (one of petitioner's character witnesses in his naturalization proceeding, see Govt. Exs. 7, 9, R. 201, 204) went to Frank Kelly, who was engaged in the importation of illegal liquor, and arranged to have several thousand cases of liquor transferred from a ship at sea to Kelly's vessel, an ocean-going schooner which was laying 100 miles off Long Island (R. 81-86, 93). The plan was to land the liquor in smaller boats at a later time (R. 85-87). In December 1925, petitioner and Kelly arranged to have one Coffey land the liquor stored on board Kelly's schooner (R. 152). Coffey was paid by petitioner's bookkeeper (R. 155, 162).

Late in 1924 or early in 1925, Sausser became associated with petitioner, an association which continued until Sausser's death in 1926 (R. 113-116, 123). Sometimes alcohol was stored on Sausser's premises (R. 118-119), and petitioner and Sausser were sometimes heard to discuss the business aspects of "bootlegging," such as the type of whiskey to be purchased and the price to be paid (R. 120). Sausser's daughter (Miss Helen

Sausser) visited the Lexington Avenue office used by petitioner and her father on three or four occasions. Although "supposedly a real estate office," this location was actually the base of operations for their dealings in illicit alcohol (R. 116-117, 123, 131-134).

On July 20, 1938, in a statement given to James M. Sullivan, Special Agent of the Treasury Department, petitioner stated that he had been in the liquor business "from 1923 or 1924 until about a year or two before Repeal." (R. 177-178).

In testimony before a federal grand jury on August 24, 1939, petitioner admitted that he had done "a little bootlegging," the last time around 1926 (R. 179-180).

In 1943, in testimony before a New York state grand jury and before a referee appointed by the Appellate Division of the Supreme Court of New York, petitioner stated that he smuggled illegal alcohol into this country during prohibition and received large sums of money from this activity (R. 184-185). During the period 1919 to 1932, petitioner earned $305,000, and most of this income came from his illicit alcohol traffic (R. 187-188, 190-191). Petitioner made about $20,000-25,000 in one real estate transaction during this time, using funds derived from "gambling or liquor" to finance the operation (R. 188-189).[3]

[3] Pursuant to the order of a New York state court, petitioner's telephone communications were intercepted during the period May 7, 1943 to November 1943. The grand jury interrogation was precipitated by a conversation between petitioner and a New York state judge (R. 47, 49-51). However, no information relating to petitioner's activities before 1930 was derived from these wiretaps (R. 46) and none of the interrogation regarding pre-1930 activity was based on or derived from wiretapipng (R. 47-48). Petitioner was interrogated regarding his pre-1930 pursuits solely for the purpose of background (R. 51).

On February 15, 1947, while testifying before the New York State Liquor Authority, petitioner stated that he engaged in bootlegging from 1923 to 1926 or 1927, that his headquarters was at 405 Lexington Avenue, and that his Canadian representative was Harry Sausser (R. 194-196).

A search of the records of the boroughs of Manhattan, Brooklyn, Queens, and the Bronx revealed that petitioner purchased a piece of property in 1922 and conveyed it to "Loretta B. Costello" in 1923. (R. 94-95). In 1924, the Koslo Realty Corporation purchased property in New York City and sold it on June 23 1925 (R. 95, 99).[4] A purchase-money mortgage on this property was released on December 21, 1925, and petitioner signed the release as president of the Koslo Realty Corporation (Govt. Ex. 25, R. 225-226). The Koslo corporation also purchased several lots in the Bronx on August 12, 1925 (Govt. Exs. 19, 20, R. 209-212) and sold them on June 22, 1926 (Def. Ex. C, R. 231-232); purchased land in the Bronx from the Claire Building Corporation on October 26, 1925 (Govt. Exs. 21, 22, R. 213-216), and sold it to the R. G. & F. Corporation on July 15, 1926 (Def. Exs. A, B, R. 227-230). These latter transactions, however, were initiated several months after petitioner filed his petition for naturalization (see *supra*, p. 3).

2. The District Court found that the evidence was "clear, unequivocal and convincing" that petitioner had procured his order of naturalization by wilful mis-

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[4] Apparently this is the transaction referred to by petitioner when he testified before the New York grand jury in 1943 (R. 95, 188, Govt. Ex. 18, R. 208).

representation of material facts and by fraud, in that petitioner had stated his occupation was real estate, whereas his true occupation was "bootlegging", and that petitioner in his oath of allegiance swore to support and defend the Constitution and laws of the United States, whereas at the time he was actually engaged in violating the Constitution and laws of this country (R. 21-22, see 33). The District Court summarized much of the evidence set forth above to support its conclusion (R. 23-26), and it noted that "[i]f the Government rested on the testimony of the individual witnesses it might be necessary to appraise their evidence more carefully, but in view of the fact that the defendant has frankly admitted, on a number of occasions, that in the period around 1925 and prior thereto he was engaged in bootlegging, the testimony of the individual witnesses is, if anything, merely cumulative." (R. 26).

With specific reference to the question of whether petitioner was actually occupied in real estate, or could reasonably think that such an answer was an honest answer to the question asked regarding occupation, the District Court pointed out (R. 27) that

> prior to the time that Costello had sworn that his occupation was "real estate" he personally had engaged in only one real estate transfer in his own name; and the [Koslo] corporation in which he was a principal engaged in only one transaction and that to the extent of purchasing one parcel of real estate. During the same period, * * * he was actively engaged in bootlegging on a large scale and with very profitable results. * * * The

> term "occupation" would commonly be understood to refer to the income producing activity to which a person devotes the major portion of his time and from which he derives the major portion of his income. * * * Obviously if he were engaged in an illegal occupation the Government would like to know that to determine whether he properly should be admitted to citizenship. Costello, confronted with the question and the fact that his occupation was an illegal one, had one of two choices in giving his answer. If he had told the truth he would have said that his occupation was bootlegging; his application for citizenship would then have been denied.[5] When he answered that his occupation was real estate he was giving a false and misleading answer and was therefore engaging in a willful misrepresentation in order to secure his naturalization certificate.

The trial judge rejected petitioner's contention that his statements as to his prior occupation as a dealer in illicit alcohol were tainted by wiretapping. He noted that there was clear evidence showing that the government did not learn anything regarding petitioner's activities in violation of the prohibition laws from or as a result of wiretapping. Although state officers intercepted petitioner's telephone communica-

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[5] On the question of the materiality of the misrepresentation, the District Court elsewhere noted (R. 22-23) that the judge who admitted petitioner to citizenship in 1925 had, in 1926, denaturalized a person who, during the five years preceding his naturalization, had been convicted of violating the prohibition laws. See *United States* v. *Mirsky*, 17 F. 2d 275 (S.D. N.Y.).

tions in 1943, and the New York grand jury investigation was precipitated by what was thus learned, petitioner's testimony as to his bootlegging activities was elicited for the purposes of background only and was collateral to the purposes of the investigation (R. 39-42). The trial judge concluded that "[t]he evidence received in this case was not wiretap evidence nor was it the fruit of wiretap evidence." (R. 42).

3. The Court of Appeals put aside the District Court's second ground for decision—that petitioner falsely swore that he would support and defend the Constitution and laws of the United States—without finally passing on it, holding that the charge of wilful misrepresentation and fraud was amply supported by the evidence of petitioner's false statements regarding his occupation (Pet. 8a-9a). It said (Pet. 7a-8a):

> Of course one has to begin a new occupation at some point of time, and at the outset there necessarily is not a great deal of evidence as to such activity. The evidence relating to Costello's real estate dealings is at best scanty. * * * If there was any further evidence along this line [as to real estate transactions], it would be peculiarly within the knowledge of Costello, and his failure to produce evidence of such activity warrants the inference that there was none such.
>
> We think it obvious that a wordly-wise man such as Costello must have realized that his real occupation was bootlegging and that his dabbling in real estate was but "dust in the eyes" to conceal his real occupation. * * * Surely it is conceivable that an applicant might believe that the answer called

for no more than a disclosure of some "legal occupation". There is no evidence in the record that Costello so believed. * * *

ARGUMENT

1. (a) When petitioner filled out his preliminary form for petition for naturalization, one of the questions which had to be completed was "My present occupation is ————." Petitioner inserted the words "Real Estate" (Govt. Ex. 7, R. 200). When examined under oath by the naturalization examiner, petitioner stated that his business was "Real Estate" (Govt. Ex. 8, R. 202). And on May 1, 1925, when he submitted his petition for naturalization, petitioner answered the second question as follows, "My occupation is *Real Estate*" (Govt. Ex. 9, R. 204). There was nothing vague, complicated or confusing about these questions regarding petitioner's business or occupation. They simply asked petitioner to describe, as the District Court put it, the "income producing activity to which" petitioner "devote[d] the major portion of his time and from which he derive[d] the major portion of his income." (R. 27). And the answers which petitioner gave were, as both lower courts found, shown by clear, unequivocal, and convincing evidence to have been false.

According to his own sworn statement, petitioner earned $305,000 during the period 1919-1932, an average of over $23,000 each year. Almost all of this came from his illegal traffic in alcohol. There was other evidence that petitioner and his brother grossed as much as $6,000 each week in 1922-1923 from their criminal activities. As opposed to that, there was evidence that petitioner purchased one piece of property in his own

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No. 59

# In the Supreme Court of the United States

OCTOBER TERM, 1959

FRANK COSTELLO, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON MOTION FOR LEAVE TO AMEND PETITION FOR A WRIT OF CERTIORARI*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
*Solicitor General,*
*Department of Justice, Washington 25, D.C.*

name in 1922, and that a corporation in which petitioner had some interest purchased certain property late in 1924. As of May 1, 1925, the date of petitioner's petition for naturalization, that property had not been sold, and the $20,000-$25,000 which petitioner later received as profit from the sale was as yet unrealized. Moreover, the very money which petitioner put into the latter real estate purchase was derived from his liquor and gambling activities. The lower courts thus had every reason to conclude that petitioner's sporadic real estate ventures were not really his occupation, and that he was actually in the business of violating the prohibition laws.

(b) The lower courts were also fully justified in concluding that petitioner's claim that his occupation was "real estate" was a knowing falsification. It is inherently unreasonable that a person would regard a business (real estate) from which he has not derived any money as his occupation, when at the same time he was deriving large sums of money from his illicit actions and had commercialized those actions to the point of maintaining an office, employing a bookkeeper assistant, and purchasing trucks for the specific purpose of advancing his liquor dealings.

Moreover, petitioner, in his preliminary form for petition for naturalization and during his examination under oath, named Harry C. Sausser as one of his expected witnesses, and listed Sausser's occupation as "Real Estate" (Govt. Exs. 7, 8, R. 201, 202). As a matter of fact, however, according to petitioner's later sworn statement, Sausser was petitioner's Canadian representative in the purchase of alcoholic beverages

which were later illegally imported into the United States. Petitioner thus must have known that his statement as to Sausser's occupation was false, and that his statement as to his own occupation was no less so.

Petitioner's contention that he might have interpreted the question as to occupation to refer only to his legal occupation (Pet. 6-9) is not well-founded. The question itself was straightforward—it asked for a disclosure of petitioner's "occupation", not his "legal occupation". In pre-naturalization proceedings, where the applicant's good character is an issue, the government is interested in a disclosure of the applicant's real business, whether or not it is a legal line of endeavor. Petitioner argues his case as though the facts show, and the lower courts found, that he had two occupations, one legal and one illegal (Pet. 8). We understand the lower courts to have found that petitioner had only one occupation, and that one an illegal activity. It is true that the Court of Appeals noted that "it is conceivable that an applicant might believe that the answer called for no more than a disclosure of some 'legal occupation' " (Pet. App. 8a). When applied to petitioner's case, however, that would mean that if petitioner so understood the question he should have answered "none", since the facts show that he had no legal occupation. The uncontroverted facts show that petitioner was engaged for a long period of time in an illegal business from which he earned large amounts of money, that his real estate dealings as of May 1, 1925 were few in number and devoid of profit. He therefore was not actually occupied in real estate, and on three different occasions he wilfully gave false an-

swers when he stated that his occupation was real estate.[6]

(b) Petitioner's reliance upon *Nowak* v. *United States*, 356 U.S. 660, and *Maisenberg* v. *United States*, 356 U.S. 670, is misplaced. In those cases, the Court held that the question which the defendants answered incorrectly could easily have been interpreted by them "as a two-pronged inquiry relating simply to anarchy"

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[6] Petitioner extends the opinion of the court below by his assertion that the Court of Appeals concluded that his failure to testify warranted the inference that petitioner understood the question as to occupation to call for disclosure of all income-producing activities, legal or illegal (Pet. 9, see 9-11 generally). The Court of Appeals noted that, if petitioner had engaged in any real estate transactions other than those reflected in this record, those other transactions would be peculiarly within petitioner's knowledge, and his failure to prove them warranted the inference that there were none (Pet. 8a). Proof by petitioner would not have required taking the stand. If other real estate transactions existed, they could be proved in some manner other than through petitioner's testimony. The rational connection between petitioner's failure to show other dealings and the inference that there were no other real estate transactions is sufficiently strong, and the comparative convenience of producing additional evidence sufficiently favorable to petitioner, to render the inference permissible even in a criminal case (which this was not). See *Morrison et al. v. California*, 291 U.S. 82, 87-90; compare *Tot* v. *United States*, 319 U.S. 463, 467-470; *Speiser* v. *Randall*, 357 U.S. 513, 523-524.

The Court of Appeals also noted (Pet. 8a) that an applicant might believe that the answer called for no more than a disclosure of some legal occupation, but that there was no evidence that petitioner so believed. We do not think that this should be construed as a statement that petitioner's failure to take the stand warranted the inference that petitioner understood the question to require disclosure of all occupations. Rather, we read the language of the Court of Appeals to mean that, though one might conceive of a case in which an applicant had misunderstood the question, in this case the government's uncontradicted evidence (discussed *supra*, pp. 11-14) showed that petitioner had not misunderstood the question and petitioner had not presented any evidence to refute the government's showing.

rather than as an inquiry as to membership in either an anarchistic or a communistic organization (356 U.S. at 664; see 356 U.S. at 672). But that construction flowed from the very question at issue in those cases. The question, which appeared in the preliminary form for petition for naturalization at the time those defendants were naturalized, read as follows (356 U.S. at 663):

> 28. Are you a believer in anarchy? . . . Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?
>
> . . .

Although the two halves of the second part of the question, referring to "anarchy" and "overthrow", were phrased disjunctively as a matter of syntax, the Court concluded that it was sufficiently misleading to make "it not implausible to read the question in its totality as inquiring solely about anarchy" (356 U.S. at 664). Here, however, there was no such possibility of confusion. The question answered falsely by petitioner was very simple: "My present occupation is ————." Moreover, we think it significant that petitioner falsely stated that his business or occupation was real estate, not once but three times, at three separate points in the naturalization process.

This case does not involve issues similar to those in *Chaunt* v. *United States*, No. 593, this Term, certiorari granted, February 29, 1960, and *Polites* v. *United States*, No. 631, this Term, certiorari granted, February 23, 1960. In *Polites*, issues raised by the petitioner are (1) whether he is entitled under Rule 60(b) of the

Federal Rules of Civil Procedure to attack collaterally the judgment of denaturalization; and (2) if so, whether his denaturalization based on proof of Communist party membership was valid (Govt. Brief, No. 631, pp. 6-12). Whatever issues depend on the nature of the questions asked, nothing turns on the simple question of occupation involved in this case. In *Chaunt*, No. 593, the issues raised are (1) whether concealment of arrest, not specified in the affidavit of good cause, may be relied upon for denaturalization and (2) whether concealment of the particular arrest there involved represents concealment of a material fact. The resolution of the issues in *Chaunt* will have no bearing on the issues in this case. Here, the affidavits of good cause and their attached exhibits alleged the concealment and misrepresentation of petitioner's occupation. And this petitioner has never questioned the materiality of his misrepresentation; his only contention in this area is that the government's inquiry as to occupation could reasonably be interpreted as calling for a statement as to some legal occupation, so that his misrepresentation was not wilful.

2. Both lower courts considered and rejected petitioner's argument (Pet. 11-12) that the government ought not be permitted to institute denaturalization proceedings an appreciable length of time after the certificate of naturalization is issued (Pet. 3a; R. 36-39). In the words of the Court of Appeals, "This statute [§340(a) of the Immigration and Nationality Act of 1952, *supra*, p. 2] contains no provision for limitations, nor is there any other federal statute applicable to the case." (Pet. 3a). The courts below

held further that the United States is not subject to the defense of laches in enforcing its rights, quoting from *United States* v. *Summerlin*, 310 U.S. 414, 416 (Pet. 3a; R. 37), and citing numerous denaturalization cases in which that doctrine has been applied (R. 37-39).

Petitioner contends (Pet. 11-12) that sovereign immunity from laches works a hardship on him and is not sound public policy when applied to this case, because, between the time of naturalization and the institution of denaturalization proceedings, "the naturalization examiners who processed petitioner's application, the witnesses who testified on his behalf, and the judge who admitted him to citizenship have all died" (Pet. 12). This is not a sufficient reason to preclude the government from cancelling a certificate procured by misrepresentation. The government bears a heavy burden of proof in making out its case for denaturalization,[7] and that very burden provides a sufficient safeguard against denaturalization judgments founded on the time-dimmed recollection of uncorroborated hostile witnesses. The aim of the proceeding is merely to deprive the defendant of "his ill-gotten privileges", *Johannessen* v. *United States*, 225 U.S. 227, 242, and Congress has decided that, so long as the government can show by clear, convincing, unequivocal evidence that the privileges were in fact "ill-gotten", it ought to be permitted to do so.

Moreover, petitioner's argument has no application to his own case. The issue in this case was the falsity

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[7] See *Schneiderman* v. *United States*, 320 U.S. 118, 158; *Baumgartner* v. *United States*, 322 U.S. 665, 670-672; *Knauer* v. *United States*, 328 U.S. 654.

of petitioner's sworn statements as to his occupation. The primary proof that petitioner's statements were not only false, but wilfully false, flows from his own admissions made subsequent to his naturalization. And the evidence as to his real estate transactions was drawn from public records unaltered by the passage of time.

3. The trial court fully explored the question of unauthorized interceptions and divulgences of petitioner's telephone communications and ascertained that no agency of government, state or federal, learned anything regarding petitioner's illegal dealings in liquor, directly or indirectly, as a result of wiretapping (R. 40-41). The most that can be said is that a state grand jury investigation of the political nomination of a state judge was precipitated by an interception made by New York officers; that petitioner was a witness before this grand jury; and that he testified as to his prior violation of the prohibition laws when questioned regarding his background. In these circumstances, the District Court was clearly correct in concluding that *Nardone* v. *United States*, 308 U.S. 338, does not require that petitioner "be granted immunity for any admissions which he thereafter made, not in the telephone conversations but in answer to any [collateral] questions in a later investigation." (R. 41-42).

## CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.[8]

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APRIL, 1960.

[8] On April 18, 1960, after this brief had been written and sent to the printer, the Government was served with a "Motion for leave to amend Petition for a Writ of Certiorari and Amendment to Petition." We shall answer this motion separately.

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